

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0677

Use Tax

Calendar Years 1993, 1994, 1995, and 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Gross Retail Tax - Promotional Items

Authority: IC 6-8.1-5-1(a); IC 6-2.5-3-2; IC 6-2.5-3-4; 45IAC 2.2-5-61;

Taxpayer protests the methodology utilized in assessing use tax on promotional items.

STATEMENT OF FACTS

Taxpayer is a Delaware corporation with no business locations in Indiana. Taxpayer manufactures and markets various prescription drugs and over the counter consumer products. It distributes samples to wholesalers, supply houses, chain stores, hospitals, physicians, and pharmacists. Taxpayer pays use tax on these samples. Taxpayer uses 1985 costs to compute its material costs included in the samples. In 1993, it did a new calculation for another state audit and arrived with a new percentage of 56% rather than the 69% it was using. This represents a weighted average of the material costs of the products it was selling.

Taxpayer states that it wanted to change its method of computing the use tax due. The method it prefers was based on the percentage of salesmen in Indiana to salesmen everywhere. This method is based on the premise that the sales persons distribute the samples and catalogues, and that each sales person receives the same amount of samples and catalogues to distribute.

I. Gross Retail Tax - Promotional Items

DISCUSSION

Prior to hearing, the taxpayer provided the hearing officer with its sales sheet support and on

March 20, 2000, was advised that the department could not accept it. Taxpayer was advised that acceptable proof would be along the lines of shipping manifests to representatives or something similar. Taxpayer was advised that if it had proof how the information was determined, an auditor would be sent to verify. On May 4, 2000 a hearing was scheduled for Tuesday, May 23, 2000. Further discussions were held with the hearing officer and the tax manager prior to hearing and the records it needs to keep in order to change the percentage.

Taxpayer has not provided proof that the assessment is in error.

FINDING

Taxpayer's protest is denied.